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Recreational docks, private

RCW 79.90.105: Private recreational docks.

The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights. This permission is subject to applicable local regulation governing construction, size, and length of the dock. This permission may be revoked by the department upon finding of public necessity which is limited to the protection of waterward access or ingress rights of other landowners or public health and safety. The revocation may be appealed as an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law.

WAC 332-30-144: Private recreational docks.

(1) Applicability. This section implements the permission created by RCW 79.90.105, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.90.105. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) Eligibility. The permission shall apply only to the following:

- (a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and

either used for single family housing or for a multi-family residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) Uses not qualifying. Examples of situations not qualifying for the permission include:

- (a) Yacht and boat club facilities;
- (b) Houseboats;
- (c) Resorts;
- (d) Multi-family dwellings, including condominium ownerships, with more than four units;
- (e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) Limitations.

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(5) Revocation. The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and water body, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) Appeal of revocation. Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.04 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) Current leases. Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease.

They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) Property rights. No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) Lines of navigability. The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

Discussion on recreational docks, private

A residential owner of waterfront uplands may install a private recreational dock on abutting state-owned tidelands, shorelands, or bedlands without charge. The dock may be used only for private recreational purposes, must meet the criteria listed in the RCW and WAC above, and must meet applicable local regulations. This permission to install a dock is not equivalent to a lease or easement, and is not a grant of exclusive use of state-owned aquatic lands to the dock owner.

The dock owner may apply for a lease of the state-owned aquatic lands in question, and may wish to do so to gain more exclusive use of these lands, or if it does not meet the criteria listed in the RCW and WAC above. Such an application would follow the standard use authorization process, and the recreational dock would be treated as a water-dependent use. For workload management purposes, granting leases for private recreational docks is a low priority. SEE ALSO: Use authorizations; Water-dependent uses.

Permission for a dock will be revoked by the department if it interferes with navigation, interferes with a water-dependent use, or is a public health or safety hazard. A revocation can be appealed.

A houseboat or other residential use on state-owned aquatic lands does not qualify for a private recreational dock without

charge, because the resident is not the landowner. SEE ALSO: Residential uses.

Regulatory agencies and permits

WAC 332-30-122: Aquatic land use authorization.

All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) General requirements.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) Application review. In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

WAC 332-30-134: Aquatic land environmental protection.

(1) Planning. Coordinated, interagency planning will be encouraged to identify and protect natural resources of state-wide value.

(2) Reliance on other agencies. Aquatic land natural resources of state-wide value are protected by a number of special state and federal environmental protection programs including: State Shorelines Management Act, Environmental Policy Act, Hydraulics Project Approval, National Environmental Policy Act, Federal Clean Water Act, Fish and Wildlife Coordination Act and section 10 of the Rivers and Harbors Act. Governmental agencies with appropriate jurisdiction and expertise will normally be depended on to evaluate environmental impacts of individual projects and to incorporate appropriate protective measures in their respective project authorizations.

(3) Method. Leases and other proprietary aquatic land conveyances may include environmental protection requirements when:

- (a) Regulatory agencies' approvals are not required;
- (b) unique circumstances require long-term monitoring or project performance; or
- (c) substantial evidence is present to warrant special protection.

Discussion on regulatory agencies and permits

For most developments or activities on or near the water, on both state-owned aquatic lands and private lands, the project proponent must obtain a variety of local, state, and federal regulatory permits and approvals. Applicants for use authorizations should be made aware that all appropriate permits must be acquired before a final use authorization will be issued. Staff should develop a close working relationship with regulatory staff in their Region to learn about these projects, better coordinate with other agencies on potential environmental impacts, and gain opportunities to be involved early in the development process.

Public notices relating to regulatory permits are often the way the department first learns of proposed developments on

state-owned aquatic lands. Staff needs to promptly contact the party proposing the project to inform them that they must apply for a lease from the state and that the proposed use will need to be consistent with the department's statutory management goals and responsibilities.

The department usually has an opportunity to significantly reduce potential impacts from a project, and to reduce contention over the project, by being involved in the regulatory process from the outset. This involves early review and comment on permits proposed by other agencies and on environmental impact statements developed for projects. SEE ALSO: State Environmental Policy Act; National Environmental Policy Act.

Through public notices, staff may discover projects that are not located on state-owned aquatic lands, but are adjacent to those lands and might impact them. The department should take advantage of opportunities to highlight concerns related to state-owned aquatic lands. Among the most important concerns are outfalls on non-state-owned aquatic lands that discharge onto state-owned aquatic lands.

REGULATORY AGENCIES AND PERMITS: PROPRIETARY VERSUS REGULATORY STANDARDS

Discussion on regulatory agencies and permits: proprietary versus regulatory standards

While regulatory permits and approvals are very important for protecting the environment and addressing other concerns, they are not the same as satisfying the department's proprietary responsibilities. Regulatory requirements are the minimum standard for department leases. The department can and will exceed regulatory minimums when necessary to meet its proprietary obligations.

Regardless of regulatory actions, the department remains responsible for environmental protection for the long-term and in the broadest sense, in accordance with its statutes and regulations. Utilizing the knowledge and expertise of environmental regulatory agencies is a very useful and practical means of approaching many environmental concerns, but it does not replace the department's larger proprietary responsibility for "ensuring environmental protection," as described in RCW 79.90.455. Our proprietary responsibility is to manage state-owned aquatic lands in the best interests of all the citizens of the state, irrespective of regulatory rules. SEE ALSO: Public benefits; Environmental protection.

Staff should remind applicants who wish to use state-owned aquatic lands of the fundamental difference between regulatory and proprietary agencies. The regulator is the traditional government agent who can impose restrictions on a landowner in order to protect the rest of the community. This authority is strictly limited to protect the property rights of the landowner. Therefore, regulatory authority is relatively narrow and precise.

In contrast, the proprietary agency is, in effect, the landowner. The department does not impose requirements on how a person may use his or her own land, but instead determines whether that person may use "our" – the public's – land. The department's primary responsibility is to the public, not to the individual user. Our authority is restricted and guided by the legislature's direction in statute, and is broad and comprehensive enough for us to use our best judgement to determine what is in the best interests of the public.

The "reliance on other [regulatory] agencies," as described in WAC 332-30-134, is a means, not an end, to achieving environmental protection. Regulatory permitting processes are highly useful for identifying environmental problems, as well as conditions that should be placed on projects to address those problems. The information developed through

the permitting process and the expertise provided by regulatory staff may even suggest additional requirements beyond the regulatory authority that would be necessary for more comprehensive and effective environmental protection.

Whenever possible, staff should work with appropriate regulatory staff to see if the department and the regulator share the same concerns, and if these concerns can be addressed through the permitting process. For example, if both the regulatory agency and the department are concerned about public access, the length of a dock, or the location of habitat mitigation, the agencies can coordinate on resolving these issues through the permits. This also allows the lease and plan operations to be structured to accurately reflect the proposed development and its operations as it is permitted to be conducted.

WAC 332-30-134 lists circumstances when the department can establish environmental requirements in leases beyond those of regulatory agencies. To meet our proprietary responsibilities, these must be interpreted broadly. Because RCWs take precedence over WACs, this WAC cannot limit department actions if those actions are necessary to ensure environmental protection, as described in RCW 79.90.455.

Consider the following examples:

- # Several salmon species in Puget Sound and Washington rivers have been declared threatened or endangered. The federal National Marine Fisheries Service and U.S. Fish & Wildlife Service are responsible for establishing requirements for protecting threatened and endangered species, but neither has yet issued regulations on salmon protection. The absence of regulations does not mean that the department is not responsible for protecting salmon and salmon habitat, nor does it mean that the department will wait for regulations before using its proprietary authority to require lessees to protect salmon. In terms of WAC 332-30-134, the “unique

circumstances” and “substantial evidence” in this case are the threatened or endangered status of salmon.

- # The department strongly discourages residential uses on state-owned aquatic lands. When residential uses are allowed, however, they must use a sewage disposal system to prevent sewage discharge into the water. Many local governments authorize houseboats or live-aboards without sewage regulations, but the department will require either a sewer hook-up or documented sewage pump-out. The “unique circumstances” and “substantial evidence” in this case are the discharge of raw untreated sewage into waters over state-owned aquatic lands.

Establishing environmental protection requirements in a lease does not require a formal determination nor, for most projects, extensive studies. Instead, the department should prepare a clear and concise description of the environmental concerns and how the requirements are designed to address them. This description should be included in the lease or in previous communications with the applicant.

The department will not second-guess whether environmental regulations adequately satisfy their regulatory goals. Instead, the department always will ask whether environmental regulations adequately satisfy the department’s proprietary goals. Also, the department will not issue highly detailed technical standards to “replace” regulatory standards. Instead, it will use a common-sense approach, building off regulatory standards when appropriate and always erring on the side of protecting the resource.

To repeat, regulatory requirements are the minimum standard for department leases. The department always will seek to cooperate with and benefit from the efforts of regulatory agencies, but is not limited to regulatory requirements. The department can and will exceed regulatory minimums when necessary to meet its proprietary obligations.

REGULATORY AGENCIES AND PERMITS: TYPES OF PERMITS

Discussion on regulatory agencies and permits: types of permits

The following table lists many activities which trigger the need for regulatory permits. These activities may be relevant for aquatic land managers if the activity occurs on or near state-owned aquatic lands. Some key permits are described following the table.

This information is from the Permit Handbook, produced by the Department of Ecology. Ecology is the best source of information on environmental regulatory permits in general.

Activity	Permit Name	Contact Agency
Using state-owned aquatic lands <i>for any purpose</i> (includes harbors, waterways, tidelands, shorelands, and beds of navigable waters)	Aquatic Land Use Authorization	Department of Natural Resources
Culturing food fish, shellfish and certain aquatic animals	Aquaculture Registration and Transfer Permit	Fish and Wildlife Hatcheries Program (360) 902-2661

Commercially harvesting and/or processing molluscan shellfish (clams, oysters, mussels)	Shellfish Operation License and Certificate of Approval	Dept. of Health, Office of Shellfish Programs (360)-236-3316
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Activity	Permit Name	Contact Agency
Conducting projects authorized by the U.S. Army Corps of Engineers and/or applying for certain federal permits or funding	Coastal Zone Management Certification	Federal Permitting agency (Corps or other), or Dept. of Ecology, Coastal Zone Management staff (360) 407-6600
Work that uses, diverts, obstructs, or changes the natural flow or bed of state waters	Hydraulic Project Approval	Fish and Wildlife Habitat Program (360) 902-2534
Transporting noxious plants or plant parts	Noxious Aquatic and Emergent Weed Transport Permit	Agriculture, Plant Services Division (Yakima); (509) 576-3039

Excavation that alters or removes archaeological resources or Native Indian grave sites	Archaeological Excavation Permit	Community Development Office of Archaeology and Historic Preservation (360) 753-5010
Spilling or releasing a hazardous substance; also use when discovering a current release, a historical release, or a situation that could cause a release or clean up action	Hazardous Substance Release Notification Requirement (MTCA)	Nearest regional Ecology office
Activity	Permit Name	Contact Agency
Installing an underground storage tank and/or having an existing underground tank on site	Underground Storage Tank Notification Requirement	Ecology 1-800-826-7716 or regional office
Conducting a concentrated animal feeding operation that discharges to state/federal waters	1. Animal Feeding Operations permit 2. National Pollutant Discharge Elimination System (NPDES) permit 3. Statewide Discharge Permits	Ecology's Water Quality Program (360) 407-6600

Point source discharge of pollutants into surface waters (discharges from industrial facilities or sewage treatment plants; stormwater discharges from industrial sites and construction sites disturbing more than 5 acres)	National Pollutant Discharge Elimination System (NPDES) permit	Ecology regional office
Disposal of sanitary sewage through septic tanks and drainfields	On-site Sewage Disposal Permit	Local health department, Dept. of Health or Ecology

Activity	Permit Name	Contact Agency
Discharging industrial, commercial, or municipal waste to ground water; or, industrial or commercial waste to municipal sanitary sewer systems	Waste Discharge Permit	Ecology regional office or Dept. of Health
Using aquatic herbicides or pesticides to control noxious and non-noxious aquatic plants	Temporary Modification of Water Quality Criteria	Ecology regional office

Applying for a federal license or permit to conduct any activity that might result in a discharge of dredge or fill material into water or wetlands, or excavation in water or wetlands	Water Quality Certification (section 401 of the Clean Water Act)	Ecology Shorelands and Environmental Assistance Program (360) 407-6600
Constructing, modifying, or repairing any dam or controlling works for storage of 10 or more acre-feet of water, waste or mine tailings	Dam Safety Construction Permit	Ecology Headquarters Water Resources Program Dam Safety Section (360) 407-6600

Activity	Permit Name	Contact Agency
Constructing a barrier across a stream, channel, or water course if the barrier will create a reservoir	Reservoir Permit	Ecology Headquarter Water Resources Program (360) 407-6600

Developing or conducting an activity valued at \$2,500 on or materially interfering with the normal public use of the water or shorelines of the state regardless of cost, and uses constituting a conditional use or variance under the local master program	Shoreline substantial development permit	Local city or county planning office
Locating a structure, excavating, or discharging dredged or fill material; transporting dredged material or ocean dumping	1. Section 404 of the Clean Water Act 2. Section 10 of the Rivers and Harbors Act	U.S. Army Corps of Engineers (206) 764-3495
Constructing a hydroelectric project	Federal Energy Regulatory Commission (FERC) License	FERC, Portland Regional Office, (503) 326-5840

Activity	Permit Name	Contact Agency
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Working in wetlands	1. Water Quality Certification (Section 401 of the Clean Water Act) 2. Section 404 permit (Clean Water Act) 3. Section 10 permit (Rivers and Harbors Act) 4. Federal Water Pollution Control Act permit 5. Coastal Zone certificate 6. Shoreline Substantial development permit 7. Hydraulic Project Approval 8. State Water Pollution Control Act permit 9. Forest Practices permit	Appropriate federal, state or local agency. If unsure, contact Ecology Wetlands program
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Joint Aquatic Resources Permit Application: The Joint Aquatic Resources Permit Application (JARPA) is a single combined permit application that can be used to apply for Hydraulic Project Approvals, Shoreline Management Permits, Approvals for Exceedance of Water Quality Standards, Water Quality Certifications, and U.S. Army Corps of Engineers permits issued under the Clean Water Act (Section 404 permits) and the Rivers and Harbors Act (Section 10 permits). Designed primarily for less complicated

projects, JARPA uses a checklist type format to help the applicant determine which aquatic permits are needed. A single application is then completed and copies sent to the agencies identified through completion of the checklist. JARPA may be initiated by an applicant, or agencies may recommend use of JARPA by an applicant.

JARPA does not cover department proprietary decisions, such as leases or other use authorizations. In JARPA, however, the department is identified as a potential landowner and the applicant is required to send the department a copy of the application. This will provide the department with basic knowledge of the project at the time of initial application for regulatory permits, allowing for early coordination with regulators on project design.

Hydraulic Project Approval permits: Any project that uses, diverts, obstructs or changes the natural flow or bed of any freshwater or saltwater of the state requires approval from the Washington Department of Fish and Wildlife (WDFW), in the form of a Hydraulic Project Approval (HPA). The focus of the permit process is to protect habitat and migration corridors critical to aquatic life. HPAs do not require a public notice and comment period, but the HPA process is an opportunity to identify and avoid impacts through early involvement in project design. Region staff should regularly communicate with WDFW staff responsible for HPAs in their region. If Region staff decides the HPA does not adequately protect state-owned aquatic lands or is missing information, they should consult with the Region Manager and coordinate a response to the Department of Fish and Wildlife.

National Pollution Discharge Elimination System Permits and State Waste Discharge Permits: The discharge of pollutants into the state's surface waters is regulated through National Pollution Discharge Elimination System (NPDES) permits. These permits place limits on the quantity and concentration of pollutants that may be discharged. To ensure compliance with these limits, permits require wastewater treatment or

impose other operational conditions. A single permit can cover a group of dischargers that have similar discharges, pollution control technology, and regulatory requirements. Examples of such operations include shipyards and fish hatcheries. The permits are generally for a period of five years and are required for:

- # Wastewater discharges to surface water from industrial facilities or municipal sewage treatment plants.
- # Stormwater discharges from industrial facilities and from construction sites of five or more acres.
- # Stormwater discharges from separate municipal storm and sewer systems that serve populations of 100,000 or more.

State Waste Discharge (SWD) permits differ from NPDES permits in that they regulate the discharge or disposal of:

- # Industrial, commercial, or municipal waste material into the state's ground waters.
- # Industrial or commercial waste into municipal sanitary sewer systems.
- # Use of water reclaimed from sewage treatment plants.

Additional permit information: To find more information about permits issued, proposed projects, changes to comprehensive plans, and related issues, staff should check the following resources:

- # SEPA and NEPA registers, SEE ALSO: State Environmental Policy Act; National Environmental Policy Act.
- # Department of Ecology mailing lists (Contact regional water quality programs)
- # Army Corps of Engineers list of permits (Get on mailing list)
- # JARPA lists (Get on mailing list)
- # Local government planning office (Get on mailing list; may include both county and city)

- # Newspapers for the local area

In addition to the above resources, staff should develop personal contact with local permit coordinators in:

- # Department of Ecology regional offices
- # Department of Fish and Wildlife regional offices
- # Army Corps of Engineers regional offices
- # Local government planning departments
- # Coast Guard local offices
- # Tribal natural resource agencies
- # Local citizen organizations

Renewable resources

RCW 79.90.455: Aquatic lands--Management guidelines.

The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources. Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit.

WAC 332-30-106 Definitions.

(59) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(7) Renewable resource utilization is a high priority use of aquatic lands.

(10) Nonrenewable resource utilization may be allowed when not in conflict with renewable resource production and utilization, public use, or chapter 90.58 RCW.

Discussion on renewable resources

The most common and economically valuable renewable resources from aquatic lands are geoducks and other shellfish. Sand and gravel can be a renewable resource as long as the hydrogeomorphological systems (such as sand transported by rivers or wave action) are undisturbed. Also, public opportunities to use and enjoy the natural resources of state-owned aquatic lands – from shellfish harvesting to swimming in the ocean to walking on the beach – should be treated as renewable resources that can only be provided through natural ecological processes. SEE ALSO: Geoducks; Shellfish; Sand and gravel; Public use and access.

Any use of renewable resources must protect both that resource and all the other public benefits of state-owned aquatic lands. For example, renewable resources must not be harvested in such a way as to reduce the ability of the resource to renew.

Rent

Discussion on rent

For most uses of state-owned aquatic lands, the lessee must pay rent to the state. Depending on the use, this rate may be set by the water-dependent rent formula or at fair market value. For some public uses, use of state-owned lands is given free of charge. For more information on rent for a specific use, see the discussion of that use.

RENT: APPEALS AND ADMINISTRATIVE REVIEW

RCW 79.90.520: Aquatic lands--Administrative review of proposed rent.

The manager shall, by rule, provide for an administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under RCW 79.90.475, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district.

WAC 332-30-128: Rent review.

This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Eligibility to request review. Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) Dispute officers. The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) Submittals. A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) Rental due. The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.90.530; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.90.530, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) Contents of request. The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) Rationale. Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) Lease information. A description of state-owned aquatic land under lease which shall include, but not be limited to:

- (i) Lease or application number;
- (ii) Map showing location of lease or proposed lease;
- (iii) Legal description of lease area including area of lease;
- (iv) The permitted or intended use on the leasehold; and
- (v) The actual or current use on the leasehold premises.

(c) Substitute upland parcel. A lessee / applicant whose lease rent is determined according to RCW 79.90.480 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

- (i) The county parcel number;
- (ii) Its assessed value;
- (iii) Its area in square feet or acres;
- (iv) A map showing the location of the parcel; and
- (v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) RDO review.

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) RDAO review.

(a) The RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within thirty days of the filing of the petition. This decision shall be the RDAO's final decision.

(8) Board review.

(a) The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee / applicant shall present written statements on the final decision of the RDAO within fifteen days of the decision to review. The board may request oral statements from the lessee / applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within sixty days of the filing of the written statements by the lessee/applicant and the department.

Discussion on rent: appeals and administrative review

Applicants for water-dependent use can appeal the determination of their rent, as determined both by the water-dependent rent formula and by fair market value for nonwater-dependent uses. The most common type of appeal is regarding the selection of upland tax parcel for the water-dependent rent formula. SEE ALSO: Water-dependent uses.

Rent appeals are handled administratively through the Division, but will usually require the assistance of the appropriate Region staff. To facilitate rent review, staff should prepare and maintain adequate records describing how the rent for any given use was determined.

RENT: FAIR MARKET VALUE

SEE: Nonwater-dependent uses; Valuation.

RENT: FOR IMPROVEMENTS

SEE: Improvements.

RENT: FOR LOG STORAGE

SEE: Log storage.

RENT: FOR MULTIPLE USES OR MIXED WATER-DEPENDENT AND NONWATER-DEPENDENT USES

SEE: Water-dependent uses

RENT: FOR NONWATER-DEPENDENT USES

SEE: Nonwater-dependent uses.

RENT: FOR PUBLIC RECREATION

SEE: Public use and access.

RENT: FOR PUBLIC UTILITIES

SEE: Utility lines.

RENT: FOR WATER-DEPENDENT USE

SEE Water-dependent uses.

RENT: INTEREST RATES

SEE: Interest rates

RENT: PAYMENT SCHEDULE

RCW 79.90.530: Aquatic lands--Payment of rent.

If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis.

WAC 332-30-122: Aquatic land use authorization.

(3) Rents and fees.

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the

property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

Reserves, aquatic

RCW 79.90.460: Aquatic lands--Preservation and enhancement of water-dependent uses--Leasing authority.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

WAC 332-30-106 Definitions.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(61) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(1) These aquatic lands, unless withdrawn by the commissioner of public lands, will be managed for the public benefit.

WAC 332-30-151: Reserves (RCW 79.68.060).

(1) Types of reserves: Educational, environmental, scientific - see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where physical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

- (a) An environmental assessment.
 - (b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.
- (7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:
- (a) Degrading water quality,
 - (b) Altering local currents,
 - (c) Damaging marine life, or
 - (d) Increasing vessel traffic.
- (8) All management costs are to be borne by the administering agency. Generally, no lease fee is required.

Discussion on reserves, aquatic

Before leasing state-owned aquatic lands, the department is required to consider the natural values of those lands as a natural area preserve, among other environmental purposes. The department can withhold from leasing lands which have significant natural values. The department will fulfill this responsibility by, among other things, establishing aquatic reserves. These reserves are to include “aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation...”

As the department prepares aquascapes and other management plans, it will identify those areas within each embayment that should be preserved for their natural values. Areas should be selected if they include such things as significant undisturbed habitat, connections between critical habitats for salmon and other species, or likely opportunities to restore these qualities.

Aquatic reserves then can be formally designated by the Commissioner. As much as possible, this process should occur before a use authorization application is made for a given parcel of state-owned aquatic lands. Once designated, no new development or lease conflicting with the reserve

status will be allowed within the aquatic reserve. As current leases expire, existing uses which conflict with the reserve status should be removed.

If an aquascape has not yet been prepared or an aquatic reserve has not yet been designated when a use authorization application is received, staff still must consider the value of the land as a natural area preserve before approving the application. If the land has high natural values, the department can withhold it from leasing pending possible designation as a formal aquatic reserve.

Residential uses

RCW 79.90.465: Definitions.

(3) "Nonwater-dependent use" means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

WAC 332-30-115: Harbor area use classes.

(4) Residential use. Residential uses include apartments, condominiums, houseboats, single and multifamily housing, motels, boatels and hotels.

Discussion on residential uses

Residential uses include any occasion when a person or persons reside for a long period of time above state-owned aquatic lands. The definition of a residential use is based on the use, not on the kind of structure or vessel being used. The definition listed in WAC 332-30-115 is part of a rule on harbor areas, but it applies to other areas of state-owned aquatic lands as well.

With one exception, residential uses are nonwater-dependent uses. (The exception is houseboats, as described below.) As nonwater-dependent uses, the department strongly

discourages residential uses and will approve them only under very limited circumstances. Residential uses must meet the same strict standards as all other nonwater-dependent uses, meaning they will be allowed only in exceptional circumstances and only if they are compatible with water-dependent uses existing in or planned for the area. Also, nonwater-dependent uses, including most residential uses, must always yield in favor of water-dependent uses. SEE ALSO: Nonwater-dependent uses.

Existing leases for residential uses will not be renewed unless the use meets the current standards for nonwater-dependent uses. A new lease may not include any residential uses unless they, too, meet the standards for nonwater-dependent uses. This includes new leases for marinas or other facilities which existed and were in trespass before they came under a lease.

Like all nonwater-dependent uses, residential uses, if allowed at all, must pay rent based on the full market value for the use. This rent may be dramatically more expensive than nearby water-dependent uses, as the most comparable private land use often will be waterfront homes.

The department is concerned primarily with permanent or long-term residential uses. Short-term or transient residence on a vessel is allowed without specific department authorization. SEE ALSO: Transient moorage.

The determination of what is or is not permanent residential use, versus what is a short-term or transient habitation, must be made on a case-by-case basis. The following are indicators of a permanent, not transient, residential use:

- # The place of inhabitation is anything other than a self-propelled vessel primarily and actually used for transportation.
- # The inhabitants have no other primary residence.

- # The place of inhabitation meets the local jurisdiction's definition of a residence for zoning or similar purposes.
- # The inhabitants have registered the vessel or the marina as a legal residence for tax, voting, mail or similar purposes. This may be indicated by use of the marina as an address on mail or on business cards, or as a school bus stop.
- # The inhabitants deduct the vessel as their primary residence for federal income tax purposes.
- # The place has signs of continuous habitation, such as bicycles, gardens, or similar items not associated with boating; advertisements indicating use as a hotel or bed and breakfast or other business aboard the vessel; or "private property" or "no trespassing" signs.
- # The place of inhabitation is a motel, hotel or boatel.

If one or more of these indicators appear to be present in a location where residential uses are not provided for in a lease, or if the location appears to have more residential uses than provided for in a lease, staff should conduct a site visit or take other appropriate measures to determine compliance with department requirements and to determine whether further action should be taken. This includes meeting with a marina owner who has residential sub-tenants, if applicable. Whenever responding to concerns over residential uses in a marina or similar setting, staff should work directly with the department's lessee, not sub-tenants.

Residential uses have even greater restrictions in harbor areas. SEE ALSO: Harbor areas.

Residential uses on state-owned aquatic lands do not qualify for private recreational docks without charge, as they are not the property owners, but rather are tenants of the state-owned aquatic lands where they reside, even if they

own the structure or vessel. SEE ALSO: Recreational docks, private.

RESIDENTIAL USES: ANCHORAGES

WAC 332-30-139: Marinas and moorages.

(2) Anchorages suitable for both residential and transient use will be identified and established by the department in appropriate locations so as to provide additional moorage space.

Discussion on residential uses: anchorages

The department may establish anchorage suitable for residential and transient use in appropriate locations. Few locations on state-owned aquatic lands, however, are appropriate for nonwater-dependent uses such as residential anchorage, and the “exceptional circumstances” criteria must be met. Where locations have already been established for residential anchorages, the department will charge rent appropriate for nonwater-dependent uses. The department has no plans to establish new residential or transient anchorage locations.

RESIDENTIAL USES: HOUSEBOATS

RCW 79.90.465: Definitions.

(2) "Water-oriented use" means a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least

three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

WAC 332-30-106 Definitions.

(27) "Houseboat" means a floating structure normally incapable of self propulsion and usually permanently moored that serves as a place of residence or business. Otherwise called a floating home.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(21) Houseboats are considered to be a low priority use of aquatic land.

Discussion on residential uses: houseboats

The term “houseboats” includes house barges. It does not include live-aboard vessels primarily designed for self-propelled transportation, even if they are used as a residence.

Unlike every other residential use, houseboats are water-oriented uses. As a water-oriented use, houseboats established before October 1, 1984, are treated as water-dependent, and houseboats established or moved after October 1, 1984, are treated as nonwater-dependent. A house boat that qualifies to be treated as water-dependent may move from one houseboat site to another houseboat site and continue to be treated as water-dependent as long as there is no net increase in sites and as long as no water-dependent uses are displaced or prevented from being established in the future due to the move. SEE ALSO: Water-oriented uses.

Houseboats are prohibited in harbor areas. SEE ALSO: Harbor areas.

RESIDENTIAL USES: IN MARINAS

Discussion on residential uses: residential uses in marinas

Within a marina or similar facility, the most appropriate time to eliminate residential uses is when a lease is up for re-lease or assignment. Before a re-lease or assignment may be granted, either the lessee must eliminate all residential uses which do not meet the standards for nonwater-dependent uses or, at a minimum, the lessee and the department must agree on a plan and timeline for eliminating all such residential uses within the marina or on the site. SEE ALSO: Marinas and moorage facilities.

This agreement, to be a binding clause in the lease, must include the identification of how many residential uses are currently present, a prohibition on new residential uses, a requirement that as existing residents vacate no new residents may replace them, and a deadline for when all residential uses will be eliminated from the marina or site under penalty of default on the lease. Appropriate portions of this agreement must be included in any subleases.

A marina operator must pay rent based on nonwater-dependent use for the entire area occupied by residential uses within the marina, including associated dock areas and a proportionate share of any common areas. To avoid this, a marina operator may wish to transfer residential uses to any privately-owned aquatic lands within the marina.

Some seasonal or limited residential uses may be accommodated, such as for off-season fishers or boat crews or for one or two slips in a marina for security reasons.

These still must meet the standards for nonwater-dependent uses, perhaps as accessory uses, and must be specifically covered by the terms of a lease.

RESIDENTIAL USES: LIVE-ABOARDS

Discussion on residential uses: live-aboards

Live-aboards are the most common residential use in marinas. A live-aboard residence on a vessel on state-owned aquatic lands is always a nonwater-dependent use. Converting an otherwise water-dependent activity (moorage of a vessel used in water-borne navigation) to a nonwater-dependent activity (residential use) does not qualify as water-dependent or even water-oriented. This means that even those people who lived aboard their vessels (except for houseboats) before October 1, 1984, will not be allowed to stay unless they meet the standards for nonwater-dependent uses.

RESIDENTIAL USES: SEWAGE AND WASTEWATER

WAC 332-30-139: Marinas and moorages.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence at a marina or other location.

Discussion on residential uses: sewage and wastewater

If a residential use is allowed on state-owned aquatic lands, it must have upland sewage disposal. This may be through a sewer connection or documented use of a pump-out facility. In no circumstances may residential sewage be discharged into the water.

Also, the boat owner and the marina owner, if applicable, must prevent discharge of other pollutants, such as fuel, cleaners, paint, garbage and “gray water.” Any sewer discharge or excessive discharge of other pollutants from residential uses will be grounds for revoking a lease, including revoking a marina lease if the marina owner fails to take adequate steps to control discharge by boat or houseboat owners.

Resource Management Cost Account

RCW 79.64.020: Resource management cost account--Use.

A resource management cost account in the state treasury is hereby created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering public lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights of way as authorized under the provisions of this title. Appropriations from the account to the department shall be expended for no other purposes. Funds in the account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(2) Resource management cost account revenue from leasing of these aquatic lands shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

Discussion on Resource Management Cost Account

The Resource Management Cost Account (RMCA) receives some of the revenue generated from the department's management of state-owned aquatic lands. The money in this account is used to pay for management costs.

The remainder goes to the Aquatic Lands Enhancement Account to fund public access and habitat enhancement projects. SEE ALSO: Aquatic Lands Enhancement Account.

Right-of-entry

SEE: Use authorizations.

Right-of-way

SEE: Use authorizations; Linear projects.

River management

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(23) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

WAC 332-30-163: River management.

- (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.
- (2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.
- (3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.
- (4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.
- (5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized

in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

Roads

SEE: Bridges and roads.